HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 3774/01

Indra Singh

Vs.

State of U.P.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 08.06.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 3774 (MS) OF 2001

Indra Singh
S/o Mangal Singh,
R/o Rashim Mazari, Dehradun.

.....Petitioner.

Versus

1. State of U.P.
2. District Magistrate, Dehradun.
3. A.D.M./Finance, Dehradun. .....Respondents.

Dated: 08.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri L.K. Tiwari, Advocate for the petitioner and Standing Counsel for the State.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 10th February, 1992 (Annexure No.2 to the writ petition).

Briefly stated, an auction notice was issued by the respondent no. 2 on 22nd August, 1991 inviting the tender. 23/24th September, 1991 was fixed for holding the auction in order to grant mining lease for different areas for the year, 1991-92. The petitioner participated in the auction held on 23rd September, 1991 and the bid of the petitioner was highest and was accepted for a period of one year commencing from 1st October, 1991 up to 30th September, 1992 for an amount of RS. 4,40,000/- by the respondents no.1 and 2. A letter was received on 10th February, 1992 for execution of the lease deed and the payment of the stamp duty of 63,800/-.

The submission of the petitioner is that the deed having been executed on 23rd September, 1991 and therefore, the subsequent amendment w.e.f. 1st October, 1991 by adding Clause (e) in Sub Section 16 of Section 2 of thue Indian Stamp Act, which also included the agreement, which has to be executed under Rule 29 within the meaning of the word 'lease' shall not apply in the case of the petitioner.

The petitioner has relied upon the decision of Writ Petition No. 4552 (MS) of 2001 Brij Bhushan Joshi Vs. State of Uttar Pradesh dated 9th August, 2005, where the same principles have been taken into consideration following the observations of the Full Bench in ***Board of Revenue Vs. Mulakh raj and another 1984 All.L.J.331*** *to the following effect:-*

"The learned counsel for the petitioner relied on the judgment of Full Court of Allahabad High Court in "Board of Revenue Vs. Mulakh Raj and another, (1984 ALL.L.J.331) decided on 26.11.1983." The Full court considered the nature of the right under the instrument and found out to be analogous to a profit a prendre. The intention of the parties was clear form the documents in question that only the produce had to be collected, stacked and taken away. It was a specified right without in any way affecting the and on which the produce was available. Since, there was no transfer of immovable property the document was not intended to be a lease but was in the nature of a licence i.e. to take away the produce of the land.

The full Bench further held that the right under the instrument merely permits the party to dig, excavate, scrape, collect and take away the sand or morun form the river bed or from the banks of the river and there is no right conferred under the deed to the party in respect of the land on which

the sand lay. Consequently, no right was conferred in respect of any immovable property. Thus, there was no question of any lease in respect of any immovable property. Unless the property has the character of immovable property, it would not come within the definition of the expression 'lease' as defined in the Stamp Act.

Accordingly, the Full Bench held that an instrument grating a right is not a lease deed within the meaning of Section 2(16) (c) of the Stamp Act but is a mere licence chargeable under Article 5(c) of Schedule 1-B of the Act, through it is termed as 'mining lease' under Minor Minerals (Concession) Rules, 1963.

The lease was granted to the petitioner on 30.09.1991 for a period of one year. The State of Uttar Pradesh after the aforesaid Full Bench decision, brought an ordinance on 23.10.1991 which was made effective from 01.11.1991 under which Clause-E was added in Sub-section 16 of Section 2 of Indian Stamp Act and thereby included the agreement which was to be executed under Rule 29 of the Minor Minerals (Concession) Rules, 1963 within the meaning of word 'lease'.

After the enforcement of this ordinance, the impugned recovery notices have been issued to the petitioner. The short controversy falls for consideration as to whether the deed which was to be executed on 30.09.1991, the stamp duty could be charged after the enforcement of the ordinance on 01.11.1991.

It is specifically provided in the ordinance that it had come into effect on 01.11.1991, while the deed was executed on 30.09.1991. The ordinance was prospective in nature and did not cover the deeds, which were to be executed prior to that date. Before the enforcement of the ordinance i.e. 01.11.1991, the law laid down by Full Bench was in operation and the Stamp Duty was payable according to the law laid down that

the deed was a licence. Therefore, the authorities have fell into error not treating the ordinance to be retrosective and in demanding the stamp duty as per amendment made by the ordinance which has been repealed by an Act subsequently.

Thus, the notices suffer from manifest error of law and are liable to be set aside. The notices are accordingly set aside. The respondents may recovery the stamp duty according to Article 5 of Schedule 1-B of Indian Stamp Act as it was operative prior to the enforcement of ordinance i.e. 01.11.1991.

The petition is allowed accordingly. No order as to costs."

The writ petition is squarely covered by the judgment in ***Writ Petition No. 4552 (ms) of 2001 Brij Bhushan Joshi Vs. State of Uttar Pradesh,*** therefore the notices are quashed.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

08.06.2006

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